

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kenneth Shelton	Team: Squad #2	CCRB Case #: 201902400	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sat, 03/09/2019 8:36 PM	Location of Incident: 664 51 Street (Chinese Mutual Support Labor Union Hall)	Precinct: 72	18 Mo. SOL 09/09/2020	EO SOL 4/26/2021	
Date/Time CV Reported Tue, 03/19/2019 6:49 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 03/19/2019 6:49 PM		

Complainant/Victim	Type	Home Address
1. [REDACTED]	Comp/Victim	[REDACTED]
2. [REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2. SGT Mark Brinadze	00850	948309	072 PCT
3. An Officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
A . POM [REDACTED]	Abuse of Authority: Police Officer [REDACTED] entered 664 51st Street in Brooklyn.	A . Substantiated
B . SGT Mark Brinadze	Abuse of Authority: Sergeant Mark Brinadze entered 664 51st Street in Brooklyn..	B . Substantiated
C . SGT Mark Brinadze	Abuse of Authority: Sergeant Mark Brinadze searched 664 51st Street in Brooklyn.	C . Substantiated
D . POM [REDACTED]	Abuse of Authority: Police Officer [REDACTED] searched 664 51st Street in Brooklyn.	D . Substantiated
E . An Officer	Abuse of Authority: Police Officer [REDACTED] damaged [REDACTED] property.	E . Officer(s) Unidentified

### Case Summary

On March 19, 2019, [REDACTED] filed this complaint with the CCRB in-person.

On March 9, 2019, Police Officer [REDACTED] and Sergeant Mark Brizande, both of the 72<sup>nd</sup> Precinct, arrived at the Chinese Mutual Support Labor Union hall, of which [REDACTED] t, located in the basement of 664 51<sup>st</sup> Street in Brooklyn. Police Officer [REDACTED] knocked on the door at the entrance of the union hall. [REDACTED] opened the door and Police Officer [REDACTED] entered the location with Sergeant Mark Brizande (**Allegation A: Abuse of Authority – Entry of Premises, Substantiated**) (**Allegation B: Abuse of Authority – Entry of Premises, Substantiated**). The officers handcuffed [REDACTED] and [REDACTED] and instructed the other individuals in the location to leave. [REDACTED] and [REDACTED] were transported to the 72<sup>nd</sup> Precinct stationhouse while Police Officer [REDACTED] and Sergeant Brizande stayed behind and searched the union hall (**Allegation C: Abuse of Authority – Search of Premises, Substantiated**) (**Allegation D: Abuse of Authority – Search of Premises, Substantiated**). [REDACTED] alleged that during this search, the officers damaged a table and two stools in the location (**Allegation E: Abuse of Authority – Property Damage, Officer Unidentified**).

[REDACTED] was charged with promoting gambling and possession of gambling records in the second degree (**BR 01**). [REDACTED] was charged with promoting gambling in the second degree (**BR 02**).

Body worn camera (BWC) video depicting the incident was received from the BWCs of Police Officer [REDACTED] Sergeant Brizande, Police Officer [REDACTED] and Police Officer [REDACTED]. The videos are located in IAs #57 to 63 (**BR 03 -BR 09**) and summarized in IAs #73- 76 (**BR 10 – BR 13**).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer [REDACTED] entered 664 51st Street in Brooklyn.**

**Allegation (B) Abuse of Authority: Sergeant Mark Brizande entered 664 51st Street in Brooklyn.**

**Allegation (C) Abuse of Authority: Sergeant Mark Brizande searched 664 51st Street in Brooklyn.**

**Allegation (D) Abuse of Authority: Police Officer [REDACTED] searched 664 51st Street in Brooklyn.**

On March 19, 2019, [REDACTED] was interviewed at the CCRB (**BR 14**). On May 20, 2019, [REDACTED] was interviewed at the CCRB (**BR 15**). On October 17, 2019, Police Officer [REDACTED] was interviewed at the CCRB (**BR 16**). On October 30, 2019, Sergeant Mark Brizande was interviewed at the CCRB (**BR 17**).

It is undisputed that, prior to the officers' arrival at the Chinese Mutual Support Labor Union hall, multiple individuals were gambling inside of the location. The location had multiple tables used to play card games and slot machines. Upon arriving, the officers' knocked on the door and [REDACTED] opened the door. It is undisputed that [REDACTED] made physical contact with Police Officer [REDACTED] immediately after opening the door. As the officers' entered the location, Police Officer [REDACTED] made physical contact with [REDACTED] Police Officer [REDACTED] and Sergeant Mark Brizande instructed everyone to leave except [REDACTED] and [REDACTED]. [REDACTED] and [REDACTED] were handcuffed by Police Officer [REDACTED] and Sergeant Brizande, respectively, and Police Officer [REDACTED] and Police Officer [REDACTED] transported them to the 72<sup>nd</sup> Precinct stationhouse. Sergeant Brizande and Police Officer [REDACTED] then searched the union hall.

[REDACTED] stated that prior to the officers' arrival, he was having a meeting with approximately twelve people. After the conclusion of the meeting, [REDACTED] and the twelve individuals began to play cards. [REDACTED] explained that the card game consisted of betting low dollar amounts. [REDACTED] explained that the inside of the location has a security camera which allows one to see outside. He was seated in the front of the office inside the hall when someone stated that police were at the

location and that he needed to open the front door. [REDACTED] heard a knock at the front door, opened the front door approximately one foot, and saw Police Officer [REDACTED]. [REDACTED] stated, “No, no, no, you don’t have the right to search,” and pushed Police Officer [REDACTED] right shoulder by extending his arms outward in front of his body with his palms open. Police Officer [REDACTED] pushed [REDACTED] left shoulder by extending his hands forward and entered the location. Police Officer [REDACTED] told everyone to leave, which they did. Police Officer [REDACTED] handcuffed [REDACTED]. Sergeant Brizande, who had also entered with Police Officer [REDACTED] handcuffed [REDACTED]. Both were then transported to the 72<sup>nd</sup> Precinct stationhouse. [REDACTED] stated that, while he was not present for the search, the officers broke a table (**BR 18**) containing approximately \$2000 to \$3000, although he was not exactly sure of the exact amount, and confiscated the money (**BR 27**).

[REDACTED] stated when the officers arrived on scene, approximately ten people were playing card games at the location and people might have also been playing the slot machines. [REDACTED] did not hear the police officer knocking on the door, but he saw [REDACTED] open the door. Immediately after entering the basement, the police officers told everyone not to move. Officers looked around the basement and told everyone to leave, except for [REDACTED] and [REDACTED] who were handcuffed and arrested.

Police Officer [REDACTED] stated that he was assigned as a Neighborhood Coordinating Officer (NCO) and that at some point on the incident date, he received approximately two or three complaints that illegal gambling was occurring at 664 51 Street in Brooklyn, which was located inside of the sector he was assigned to. He was not certain when he received these complaints but they were the first he received about the location. He received no other complaints about this location other than illegal gambling. Police Officer [REDACTED] had been to the location before for illegal gambling although he did not provide any additional information on what occurred during these prior visits. He conferred with his supervisor, Sergeant Brizande, and they both went to the location to perform a business inspection. They did not park in front of the location, but rather parked some distance away and walked to the location, which he described as a senior center or “social gathering place.” The location had a sign on the front in Chinese that may have displayed the name of the business, but Police Officer [REDACTED] did not speak Chinese and did not get the sign translated. From the front of the building, there were stairs that descended to a pair of glass doors that displayed the business’s open hours. Police Officer [REDACTED] and Sergeant Brizande went to the location outside of business hours. The glass doors were unlocked and Police Officer [REDACTED] and Sergeant Brizande went inside. After the glass doors were a pair of gray steel doors. Between the glass and the steel doors was a common area. There was no one in this common area.

After passing through a common room and two open glass doors, Police Officer [REDACTED] and Sergeant Brizande stopped in front of two steel doors, which served as the entrance to the location where the gambling was reported to be occurring. In between the two steel doors was an approximately one-inch-wide gap that Police Officer [REDACTED] noted he could have fit his hand through. Police Officer [REDACTED] looked through the gap and observed what appeared to be illegal gambling, including money being transferred, people playing on a card table, and people playing mah jong. A male sat at a card table, dealt cards, and took money from other people. A female approximately thirty feet from Police Officer [REDACTED] brought money from one side of the room to the other. There were approximately more than eight people in the room. Police Officer [REDACTED] believed these activities were illegal because a license is required to gamble inside a business. Nothing obstructed Police Officer [REDACTED] view of the room.

After observing the scene for approximately ten minutes, Police Officer [REDACTED] tried to open the door, but it was locked. Sergeant Brizande did not give Police Officer [REDACTED] any commands at that time. Police Officer [REDACTED] knocked on the door. [REDACTED] opened the door wide enough that Police Officer [REDACTED] could see him and walk in. Police Officer [REDACTED] denied

hearing [REDACTED] say, “No, no, no, you don’t have the right to search.” No other civilians told Police Officer [REDACTED] he was not allowed to enter the location. When Police Officer [REDACTED] started to walk inside, [REDACTED] put his hand on the center of Police Officer [REDACTED] chest and pushed him out of the location, which raised Police Officer [REDACTED] suspicion. Police Officer [REDACTED] moved back slightly. Police Officer [REDACTED] then moved [REDACTED] to one side and Police Officer [REDACTED] and Sergeant Brizande went inside the room.

As soon as Police Officer [REDACTED] walked in, he observed electronic card machines and several people sitting at the card table. Police Officer [REDACTED] told everyone in the room not to move and told them where to sit. Police Officer [REDACTED] used hand movements to guide everyone other than [REDACTED] and [REDACTED], who was running the card table, to leave the location. Police Officer [REDACTED] arrested [REDACTED] for managing and facilitating the location and arrested [REDACTED] for operating the card table. Police Officer [REDACTED] and Sergeant Brizande then gathered the cards and money as evidence from the table and a basket that was used to exchange money.

Police Officer [REDACTED] viewed the photograph of the damage to the location, which is attached in IA #31. He confirmed that the desk shown in the photograph was at the back of the room. He could not identify the wires and other miscellaneous items on the floor. After reviewing the Property Voucher generated (BR 19), Police Officer [REDACTED] also remembered that they recovered a brown diary from the location that contained financial information. This diary was recovered from a desk at in the back left of the room. Police Officer [REDACTED] was not aware of any property being damaged during the incident, including a table being broken.

Sergeant Brizande stated that, a few days prior to the incident date, Police Officer [REDACTED] informed him that he had received complaints of numerous people entering the location, creating loud noise, double parking their vehicle, and gambling. On the incident date, he went with Police Officer [REDACTED] to the location to follow up on the complaints. Sergeant Brizande described the location as having two levels, the upper level being a senior citizen center and the lower level being an area where the gambling was reported to have been taking place. He described the lower level as having a vestibule and two double doors used to enter the space. Sergeant Brizande added that the double doors contained a gap between the doors. Sergeant Brizande did not recall how big the gap was between the doors but stated that it was large enough for him to see through. Sergeant Brizande looked through the gap and observed individuals playing cards with money on the table.

One of the officers knocked on the door, although Sergeant Brizande did not recall who knocked on the door, and [REDACTED] opened the door. At the moment [REDACTED] opened the door, Sergeant Brizande noticed multiple video gambling machines to the left of the door. As the officers were entering the location and crossing the threshold of the door, [REDACTED] placed his hands on Police Officer [REDACTED] arm for a couple of seconds and “shoved” him. Sergeant Brizande did not remember if [REDACTED] said anything as he did this. After [REDACTED] “shoved” Police Officer [REDACTED] Police Officer [REDACTED] used his hands to push [REDACTED] hands off of his body and the officers entered the location. Upon walking further into the location, Sergeant Brizande observed a minimum of ten people in the location seated at multiple tables. Sergeant Brizande observed “signs on the wall...from [his] training and experience to indicate that there was a house that would be taking a cut of each hand that would be played.” After a conversation with [REDACTED] the officers identified him as the person in charge of the gambling operation.

The EVENT generated for this incident notes that the officers conducted a business inspection and placed two individuals under arrest (BR 26).

Police Officer [REDACTED] BWC (BR 03) shows, beginning at 7 seconds into the recording, Police Officer [REDACTED] attempting to open the steel door to the location. Within seconds, [REDACTED] opens the door. [REDACTED] and Police Officer [REDACTED] make physical contact as the officers enter the location, however the clip does not provide an angle that clearly captures the entirety of the entry.

A Google Streetview of the incident location shows the incident location as the lower level of a two-story building. The signage outside of the location depicts the location as “Chinese Mutual

Support Labour Union.” The entrance to the location is behind two glass doors, which leads to an open foyer. The entrance to the rest of the location is behind two steel doors. (BR 28)

PG 207-08 allows NYPD supervisors to authorize officers to enter public locations to address complaints of illegal gambling (BR 29).

Warrantless entries by officers into private locations are presumed unconstitutional, barring consent, an emergency, or exigent circumstances. While the courts have established that commercial business locations, by their general invitation to the public to enter, have a diminished expectation of privacy, “commercial establishments do not extend an implicit invitation to enter during non-business hours.” United States v. Swart 679 F. 2d 698 (1982). In Swart, the court ruled that a commercial location’s expectation of privacy was not diminished at the time officers’ entry because the business was closed at the time, officers had no reason to believe that the specific area they were entering was an area generally open to the public, and an employee expressly told the officers that they did not have permission to enter the area (BR30).

The courts have established that the congregation of a large number of persons in a private location for the purpose of gambling does not transform it into a public location open to the police. Reznick v. Lorain. 393 U.S. 166 (1968) (BR31).

In People v. Green 81 A.D.2d 621 (1981), the court ruled that a defendant had no expectation of privacy in a location he described as a “private club” because “the building had been abandoned by its owner, that it was used by neighborhood persons as a place for gathering and gambling, and that it was open to any member of the public who chose to enter. The door was open, unattended and unlocked and people could come and go as they pleased” (BR32).

The courts have recognized an exception to the warrant requirement for inspections of “pervasively regulated” businesses and “closely regulated” businesses “long subject to close supervision and inspection” by the government. Some of the types of business for whom the courts have recognized this exception are businesses in the liquor and firearms industries, pawnshops, and junkyards. New York v. Burger, 482 U.S. 691 (1987) (BR33).

A union hall, as this location was clearly identified to be by the sign outside, is generally by its nature a membership-based establishment. Nevertheless, even if treated as a commercial establishment generally open to the public, in light of the fact that it was outside the time of the posted business hours, the fact that the doors were locked when the officers arrived and attempted to enter, and the fact that [REDACTED] attempted to physically prevent the officers from entering the location, the investigation determined by a preponderance of the evidence that [REDACTED] and [REDACTED] had an expectation of privacy inside the location and the mere presence of other individuals inside the location did not render it open to entry and search by the officers. Furthermore, when considered more as more akin to a “private club” than a commercial business, in all of the factors cited by the court in determining that there was no expectation of privacy in the “private club” in Green, the conditions present at the union hall in this case was the opposite. Therefore, whether assessed as a commercial business or as a private club, at the time officers entered the union hall in this incident, the hall could not be considered a “public location,” [REDACTED] and [REDACTED] likely had an expectation of privacy, and the officers required a warrant or one of the established exceptions in order to enter and search the union hall. Nevertheless, the exception cited by the officers, that of a business inspection, is limited by the courts to closely regulated business such as those licensed to sell liquor and firearms and would not apply to a union hall. The officers were therefore not justified in forcibly entering and searching the location. It is therefore recommended that **Allegations A, B, C, and D be Substantiated.**

**Allegation (E) Abuse of Authority: An officer damaged [REDACTED] property.**

[REDACTED] alleged that the officers also damaged a table and two chairs located in the office during the search (BR 20).

Police Officer [REDACTED] denied that any chairs were broken during the incident and clarified that they were moved so that people could leave the room and so that the officers could



Reviewer:

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Signature

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Print Title & Name

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Date